

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Spanish Eastern District Council of the Assemblies of God/Temple Nuevo Amanecer)	
	Dist. 1, Map 50, Control Map 50, Parcel 52, S.I. 000)	Warren County
	Tax Year 2007)	
	Exemption)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from the partial denial of an application for exemption of the subject properties from ad valorem taxation. The application was filed with the State Board of Equalization (the "State Board") on April 3, 2007. By letter dated October 30, 2007, State Board staff attorney Mark Aaron notified the applicant of the partial denial on the grounds that:

"50% of the church and 50% of the land not supporting the parsonage (exact amount of land not supporting the parsonage to be determined by assessor) are approved for exemption."
Mr. Aaron also stated : "The parsonage and land supporting the parsonage (exact amount of land supporting the parsonage to be determined by the assessor) are denied exemption and shall remain taxable ¹. . . ."

Rev. Ben Day, the pastor of Templo Nuevo Amanecer De Las, Asambleas De Dios, hereinafter referred to as "The Church," timely appealed the staff attorney's initial determination to the State Board on December 26, 2007, pursuant to Tenn. Code Ann. section 67-5-212(b)(2). The undersigned administrative judge conducted a hearing of this matter on March 11, 2008 in Nashville, Tennessee. The church was represented by Rev. Ben Day. The Warren County Assessor, Caroline Miller, was contacted by the State Board of Equalization when she did not appear in a timely fashion. While she acknowledged that she did receive notice of the hearings,² Ms. Miller chose not to appear for the hearings to relate the County's position or defend the value established by the County Board of Equalization.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On June 29, 2005, The Church purchased improved property commonly known at 682 Bluff Springs Road, in McMinnville Tennessee. The testimony at the hearing by Rev. Day established that the property was purchased from the Tennessee Conference of the United Methodist Church. The deed erroneously showed Spanish Eastern District Council in Old Tappan, New Jersey as the new owners. So any Notices that were intended for the

¹ A copy of Mr. Aaron's letter is in the file maintained by the State Board of Equalization.

² The Church has filed an exemption appeal and an appeal as it relates to Value of the subject property.

Church were sent to the District Council instead; therefore, timeframes for responses were missed or delayed.³ Rev. Day has indicated that the Baptist Church that was using their facilities has moved out. He has also indicated that the Church has made a decision to continue to use the house that was previously considered the parsonage as rental property for revenue purposes. Rev. Day understands that, as long as the home produces revenue, it can not be considered for an exempt status.

This new information is certainly germane to issues under appeal. As Administrative Judge Pete Loesch noted in New Fellowship Ministries, (Hawkins County, Initial Decision and Order, October 13, 2006):

NFM undoubtedly qualifies as a religious institution under T. C. A. § 67-5-212. ***Yet, based on the factual situation at the time, the staff attorney's ruling on the application was clearly correct.*** Arguably an applicant for exemption should not be allowed to submit new or additional information in an appeal from an initial determination. For better or worse, however, the Assessment Appeals Commission appointed by the State Board pursuant to T. C. A. § 67-5-1502 has followed the more lenient policy that "until an application is finally determined, the Board. . . should consider all pertinent evidence relative to the application at hand." (emphasis supplied) Beth Shalom East Memphis Synagogue, Inc. (Shelby County, final Decision and Order, May 16, 2001). p3

See also Christian Chapel Church, (Bedford County) *Initial Decision and Order*, August 8, 2003, when ALJ Pete Loesch also stated:

. . . [A]n "appeal" of an initial determination is not confined to the question of whether the State Board designee acted properly on the basis of the information available. Rather, the appellant is permitted to submit new evidence in support of the claim of exemption . . . Indeed, the appellant may even "update" the application to include recent developments

The Supreme Court in Mid-State Baptist Hospital, Inc. v. City of Nashville, 211 Tenn. 599, 366 S.W.2d 769 (1963), has emphatically restated the proposition that in this State, contrary to most other states, tax exemption in favor of religious, scientific, literary and educational institutions are liberally construed, rather than strictly. It is further pointed out that the opinion in City of Nashville v. State Board of Equalization, 210 Tenn. 587, 360 S.W.2d 458 (1962) in no way dilutes the rule of liberal interpretation.

Article II, section 28 of the Tennessee Constitution authorizes, but does not require, the legislature to exempt from taxation property which is "used for purposes purely religious, charitable, scientific, literary, or educational." Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious,

³ Pastor Day has indicated that the Church intends to have the attorneys submit a corrected deed to the County's Registrar of Deeds to eliminate future problems.

charitable, scientific or nonprofit educational institution which is **occupied and used by such institution** or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists... [Emphasis added.] Tenn. Code Ann. § 67-5-212(a) (1) (A).

As previously stated, in this State, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and educational institutions. See, e.g., Christian Home for the Aged, Inc. v. Assessment Appeals Commission, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). Nevertheless, as the party appealing from the initial determination on its application for exemption, The Church has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

In the present case, after a review of the exhibits furnished by the Church; testimony of the pastor, Rev. Ben Day; and the entire record in this cause, the administrative judge is of the opinion that the Church and its contents are exempt from ad valorem taxes, as well as all surrounding land. The exact amount of land supporting the church is to be determined by the assessor. The effective date of the exemption shall be June 29, 2005.⁴

ORDER

It is, therefore, ORDERED that the initial determination of the State Board's staff attorney is modified as the appellant has sustained their burden and the Church parcel is exempt, with the exact amount of land supporting the church to be determined by the assessor. The portion of the land that supports the house/parsonage shall remain taxable as long as the structure, which also taxable, is used as a source of revenue for the Church.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

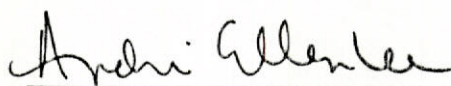
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition

⁴ See Board's Designees letter, page 2, paragraph 2.

for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 31st day of March, 2008.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Pastor Rev. Ben Day
Caroline Miller, Warren County Assessor of Property
Darlene Bryant, Warren County Trustee's Office